

Atty. Docket: NL 000571

REMARKS

1. Claims 1-22 are pending in the application. Claims 1, 2 and 8-16 stand rejected and claims 17-19 stand objected to. This paper amends claim 22.

Reconsideration of this application is respectfully requested.

2. It is gratefully noted that claims 3-7 and 20-22 stand allowed, and that objected to claims 17-19 contain allowable subject matter.

3. Claim 22 has been amended to correct a minor typographical error.

4. Claims 1, 2, 8, 9, and 16 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 3,922,607 to Wysong. This rejection is respectfully traversed.

Independent claim 1 recites, *inter alia*, "...the primary and secondary programs are transmitted in an alternating sequence...and the tertiary programs...are transmitted parallel to these programs." Independent claim 16 recites, *inter alia*, "...primary and secondary programs...transmitted in an alternating sequence and tertiary programs...transmitted parallel to the primary and secondary programs."

Wysong does not expressly or inherently describe the subject matter of claims 1 or 16. Instead, Wysong describes the parallel transmission of a main channel, a first subcarrier, and a second subcarrier. The main channel carries a first program (public program heard on FM), the first subcarrier provides a second program (background music), and the second subcarrier provides commercials, conference calls, or other information. Wysong does not describe primary and secondary programs transmitted in an alternating sequence, as claimed. In addition, Wysong does not describe tertiary programs transmitted parallel to the primary and secondary programs transmitted in an alternating sequence, as claimed. For at least these reasons, claims 1, 16, and 2, 8 and 9 that depend directly or indirectly from claim 1, are allowable over Wysong.

In view of the foregoing, withdrawal of this rejection is respectfully requested.

5. Claims 10-15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Wysong. This rejection is respectfully traversed.

The examiner takes official notice, without documentary evidence, that the differences

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between Wysong and the claimed invention would have been obvious to one of ordinary skill in the art at the time of invention. (See MPEP 2144.03)

It is respectfully submitted that official notice unsupported by documentary evidence should only be taken where the limitations asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. See *In Re Ahert*, 424 F.2d 1088, 1091, 165 USPQ 418, (CCPA 1970). There must be some concrete evidence in the record to support an assertion of common knowledge. See *Lee*, 277 F.3d at 1344-45, 61 USPQ2d at 1434-35 (Fed. Cir. 2002) and *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697. There is nothing in Wysong or the record of the present application to support the assertion that the limitation ““information mode”, which is initiated each time the user has changed the selected channel and which is terminated a given period of time after initiation” as recited in claims 10-14, is common knowledge in the audio and video transmitting, receiving and reproducing art. For at least this reason, claims 10-14 are allowable over Wysong.

If this rejection is maintained with respect to claims 10-14, the applicant respectfully requests that the Examiner provide evidence to support the “official notice” assertion regarding the claimed limitation not taught by Wysong, either in the form of a specific prior art reference per MPEP § 2144.03 or an affidavit under 37 CFR 1.104 (d) (2), and an explanation of why one of ordinary skill in the art would have been motivated to modify Wysong which does not teach or suggest a method where an information mode is initiated each time the user has changed the selected channel.

Dependent claim 14 additionally recites, *inter alia*, “...the primary and secondary programs are transmitted in an alternating sequence...and the tertiary programs...are transmitted parallel to these programs.” Claim 15 recites this feature also by way of its dependency from claim 1.

Wysong does not teach or suggest this subject matter. Instead, Wysong teaches the parallel transmission of a main channel, a first subcarrier, and a second subcarrier. The main channel carries a first program (public program heard on FM), the first subcarrier provides a second program (background music), and the second subcarrier provides commercials, conference calls, or other information. Wysong does not teach or suggest primary and secondary programs transmitted in an alternating sequence, as claimed. In addition, Wysong does not teach or suggest tertiary programs transmitted parallel to the primary and secondary programs transmitted in an alternating sequence, as claimed. For these (additional) reasons, claims 14 and 15 are allowable over Wysong.

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In view of the foregoing, withdrawal of this rejection is respectfully requested.

6. Favorable reconsideration of this application is respectfully requested as it is believed that all outstanding issues have been addressed herein and, further, that claims 1-22 are in condition for allowance. Should there be any questions or matters whose resolution may be advanced by a telephone call, the examiner is cordially invited to contact applicants' undersigned attorney at his number listed below.

7. The Commissioner is hereby authorized to charge payment of any additional filing fees required under 37 CFR 1.16 and other patent application processing fees under 37 CFR 1.17, which are associated with this communication, or credit any overpayment to Deposit Account No. 04-1679.

Respectfully submitted,

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